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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-847

SALVADOR S. CIRAVOLA

Petitioner

VS.

STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI TO THE TWENTY-FOURTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

SALVADOR S. CIRAVOLA

VS.

STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI TO THE TWENTY-FOURTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA

The petitioner, SALVADOR S. CIRAVOLA, prays that a Writ of Certiorari issue to review the opinion and judgment of the Supreme Court of the State of Louisiana rendered in these proceedings on September 20, 1974 and October 11, 1974, and of the Twenty-Fourth Judicial District Court in and for the parish of Jefferson, State of Louisiana, rendered in these proceedings on February 5, 1974.

OPINIONS BELOW

The opinions and judgments of the Louisiana State Supreme Court appears at Appendix B, p. 16. The opinion of the District Court, not reported, is set forth in Appendix A, p. 11.

JURISDICTION

The judgment of the District Court of the State of Louisiana was entered on February 5, 1974. The judgment of the Supreme Court of the State of Louisiana was entered on September 20, 1974. A timely petition for rehearing was denied on October 11, 1974, and is final by its terms. As a result of the judgment of the Louisiana State Supreme Court, the judgment of the District Court for the State of Louisiana has become final and no further review of the merits of the Federal claims made a part of this petition is available in any Louisiana Court, therefore, petitioner's only recourse is to seek review on certiorari in the United States Supreme Court, for which he may petition within ninety (90) days after the October 11, 1974, judgment of the Louisiana State Supreme Court. The jurisdiction of this Court is invoked under 28 USC §1257(3).

QUESTIONS PRESENTED

I.

Whether La. R.S. 14:103(A)(3), disturbing the peace by appearing in public in an intoxicated condition, violated the due process clause of the Fourteenth Amendment of the United States Constitution in that petitioner was convicted under a penal provision which was so indefinite and vague as to afford no ascertainable standard of criminality.

II.

Whether petitioner was deprived of rights protected by the due process clause of the Fourteenth Amendment to the United States Constitution, as that clause incorporates Fourth Amendment type protection from illegal searches and seizures.

III.

Whether the prosecution's refusal to provide the arrest records of Deputy Lawrence C. Juster, the arresting officer, and the District Courts refusal to have said records produced at trial constituted an unconstitutional (under the due process clause) or an otherwise improper denial of justice, where said documents were relevant and necessary to prove a lack of probable cause for the arrest.

IV.

Whether the Supreme Court of the State of Louisiana, in its refusal to grant petitioner's request for a Writ of Certiorari to issue, constituted an unconstitutional (under the due process clause) or an unlawful or an otherwise improper denial of justice.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "No person shall ..., nor be deprived of life, liberty or property without due process of law...."

The Fourth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "No warrants shall issue ... except upon probable cause...."

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "...nor shall any state deprive any person of life, liberty or property without due process of law...."

Title 14, Article 103(3) of the Louisiana Criminal Code, LSA-R.S. 14:103(3). Reprinted in pertinent part in Appendix C, p. 18, infra.

STATEMENT OF THE CASE

Petitioner, SALVADOR S. CIRAVOLA, is and was at the time of his arrest employed by the City of Kenner, Parish of Jefferson, State of Louisiana, as a police officer. On April 6, 1972, petitioner was arrested for violation of LSA-R.S. 14:103(3), disturbing the peace, and LSA-R.S. 14:108, resisting an officer. Petitioner claimed that there was no probable cause for his arrest, but was brought to trial on September 19, 1973, and was found guilty in the First Parish Court of Jefferson Parish,

State of Louisiana, of disturbing the peace by appearing intoxicated in public and of resisting an officer. Petitioner was granted and oral request for an appeal to the Twenty-Fourth Judicial District Court in and for the Parish of Jefferson, State of Louisiana, and was given ten (10) working days to file a written motion to that effect. A written motion was filed and granted on October 15, 1973, and the appeal date was set and thereafter continued until February 5, 1974. The appeal from the First Parish Court, which under Louisiana law when coming from a Parish Court to a District Court is had by conducting a trial de nova (trying the case entirely over again), was heard by the Twenty-Fourth Judicial District Court, and petitioner was again found guilty of the aforementioned charges.

The first three federal questions sought to be reviewed here were raised before the Twenty-Fourth Judicial District Court prior to and during the trial de novo, by petitioner's:

1. Timely motion to quash the information based on the constitutionality of LSA-R.S. 14:103 (3), in that said statute was sufficiently vague to render it unconstitutional on its face. Petitioner's motion to quash was denied by the trial judge, at which time petitioner reserved a bill of exception.

2. Timely objection to the court's ruling denying petitioner's

> request for the arrest records of Deputy Lawrence Juster, the arresting officer, said records being necessary and relevant to prove a lack of probable cause for the arrest, petitioner, at this time, reserved a bill of exception to the court's ruling.

Upon the completion of the trial de novo, petitioner served notice on the Court of its intention to appeal and/or apply for supervisory writs to the Supreme Court of the State of Louisiana, and on July 30, 1974, filed for Writs of Certiorari to that Honorable Court. On September 20, 1974, the Supreme Court of Louisiana denied petitioner's application for writs as being not timely filed, and petitioner thereafter filed a timely petition for rehearing. In his petition for rehearing, petitioner avered that it would be in the interest of justice so as not to unduly prejudice the defendant, that this Honorable Court should grant a rehearing on this matter in that oral extentions of time to file the writs were granted by the trial judge, and as such, petitioner's writs should be considered as being timely filed. The Supreme Court of the State of Louisiana denied petitioner's petition for rehearing stating that no official record supports contention of oral extention of time on October 11, 1974.

REASONS FOR GRANTING THE WRIT

I.

LSA-R.S. 14:103(3), prohibits disturbing the peace by appearing in an intoxicated

condition in such a manner as would foreseeably disturb or alarm the public, What does appearing in an intoxicated condition mean? What amount of alcohol must one consume and in what degree of intoxication must he be in to foreseeably disturb or alarm the public? In petitioner's view, the courts below have denied him rights to which United States v. Harris, 347 U.S. 612, 617, 74 S. Ct. 808, 812, 98 L. Ed. 989, indicates he is entitled, in that the statute, and I quote from the Harris decision, "Fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the Statute". In short, this section of LSA-R.S. 14:103(3) is not fenced in by the text of the statute or by the subject matter so as to give notice of conduct to be avoided. A person who has one or two drinks could be picked up by the police if in the mind of the arresting officer that person is intoxicated. There are no guidelines to go by, and each individual police officer has it within his discretion to decide what intoxication means and what foreseeably disturbs or alarms the public means. Since each police office who makes an arrest under the provisions of LSA-R.S. 14:103(3), does so without set guidelines, applying instead his own individual interpretation of the statute, the statute, because of its vagueness, encourages arbitrary and erotic arrests and convictions in violation of Thornhill v. Alabama, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093, which condemned such activity on the part of the police and any statute so vague as to allow such activity. This Honorable Court should

decide whether the provisions of LSA-R.S. 14:103(3) meets the standards set down by the Constitution of the United States and the aforementioned cases.

II.

Petitioner claimed that there was no probable cause for his arrest, that his actions did not amount to conduct which constituted a criminal offense. At trial, petitioner was refused the right to enter into evidence the arrest records of the officer who had arrested him, Deputy Lawrence Juster, said records were extremely relevant and necessary to show a lack of probable cause for the arrest. Petitioner avered that the arrest was made because of ill will felt towards him by Deputy Juster and not as a result of probable cause, but the court refused to subpoena said records and the prosecution refused to introduce them or to allow petitioner to see them. Arrests may be made only on probable cause which is a Fourth and Fourteenth Amendment standard applicable to the states as well as the federal government, Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S. Ct. 839, 847, 31 L. Ed. 2d 110; Whitely v. Worden, 401 U.S. 560, 91 S. Ct. 1031, 28 L. Ed. 2d 306. The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the states accusations. Chambers v. Mississippi, 410 U.S. 248, 93 S. Ct. 1038, 1045, 35 L. Ed. 2d 297; in re Oliver, 333 U.S. 257, 273, 68 S. Ct. 499, 507 92 L. Ed. 682. Certainly due process was not met when the court denied petitioner the right to introduce evidence in his behalf that was relevant and necessary to

prove a lack of probable cause, nor was it met when the prosecution refused to allow petitioner the right to see such evidence. This Honorable Court has held on numerous occasions that the suppression of material evidence justifies a new trial, irrespective of the good or bad faith of the prosecution. Giglio v. United States, 405 U.S. 150, 925 S. Ct. 763, 766, 31 L. Ed. 2d 104; Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1197, 10 L. Ed. 2d 215. This Honorable Court should decide whether or not the refusal of the District Court to subpoena the arrest records and/or the refusal of the prosecution to introduce such or to allow petitioner to see such denied petitioner due process of law as guaranteed him under the Constitution of the United States.

III.

Petitioner, in the interest of justice and in consideration of the standards set down by the Constitution of the United States in regard to due process of law, avers that the denial of the Louisiana Supreme Court to issue a Writ of Certiorari based on the reasons it assigned, unduly prejudices the petitioner and denies him the right to be heard on the merits. Petitioner did in fact ask for and obtain oral extentions of time to file his writs before the Louisiana Supreme Court and should at least be given the opportunity to be heard on that issue.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Twenty-Fourth Judicial District Court in and for the Parish of Jefferson, State of Louisiana and the Supreme Court of the State of Louisiana.

Respectfully submitted,

RALPH R. MILLER
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COUNSEL FOR PETITIONER

APPENDIX A

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

STATE OF LOUISIANA APPEAL NUMBER 147

VS.

DIVISION "E"

SALVADOR S. CIRAVOLA
ALIAS SAL

* * * * *

Bills of Exception taken during the trial in the above numbered and entitled cause before the Hon. Fred S. Bowes on the 5th day of February, 1974.

* * * * *

APPEARANCES:

ABBOTT REEVES, EST.
Assistant District Attorney representing the State.

RALPH R. MILLER, ESQ.
JACK TITTLE, JR., ESQ.
Attorneys for Defendant

* * * * *

REPORTED BY: LINDA E. LaBORDE, C.S.R.-O.C.R.

particular statutes for which the Defendant is being tried today.

THE COURT:

The court has read the memorandum submitted by counsel for Defendant and the court feels that the motion to quash is without merit and there is no basis for upholding the Statute under which the Defendant is charged unconstitutional. The court therefore denies the motion to quash.

MR. MILLER:

To which ruling, Your Honor, I respectfully reserve a bill of exception and I make a part thereof the entire ruling and the argument and the ruling of the court.

THE COURT:

All right, sir.

BILL NUMBER 2

MR. MILLER:

I'll object to all this line of questioning. Your Honor, in the opening statement by the State he refers to incidents which occurred in the Downs Lounge. There was no mention of anything that happened outside of the Downs Lounge. The Court Reporter will read that back

BILLS OF EXCEPTION

BILL #1

MR. MILLER:

Your Honor, in connection with this matter, I would like to make a motion to quash at this time prior to the start of the trial based on the unconstitutionality of R.S. 14:103 subsection (A) (3), appearing in an intoxicated condition. The basis for this motion to quash is the Louisiana Supreme Court case, State of Louisiana versus Ganch, which rules Section 2 and 7 of the Statute unconstitutional and I feel that there is enough similarity in Section 3 to declare this Section also by analogy to this particular case, unconstitutional, so I'd like to make a motion at this time.

MR. REEVES:

The State opposes this motion, Your Honor, and ask that it be dismissed as being frivilous. Recently the Louisiana Supreme Court has considered this cause of the last minute notice. We were not aware of this particular motion on behalf of the Defense, but we could submit to the court a memorandum and cases which support our position that there is nothing unconstitutional about these

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to the First Parish Court for a trial because that is the court of original jurisdiction under the Constitution of

Louisiana and Your Honor, in effect, is hearing a completely new incident by hearing this matter 3112 Downs Boulevard rather than 3128 Down Boulevard, Metairie, Louisiana.

THE COURT:

Motion to quash is overruled and denied.

MR. MILLER:

And I respectfully request a bill of exceptions both my argument and your ruling, Your Honor.

BILL NUMBER FIVE

THE COURT:

Okay.

The Defendant has subpoenaed the confidential personnel file of Lawrence C. Juster, Deputy Lawrence C. Juster, who is one of the witnesses in this case for the State, right?

MR. REEVES:

The arresting officer, very material witness, Your Honor.

THE COURT:

All right. The State has objected

* * * * *

try to show that through the confidential records of the sheriff. I think these are privileged documents and certainly not available to you in this trial. The court will therefore maintain the State's objection to the subpoena duces tecum on the confidential personnel file of Deputy Juster.

MR. MILLER:

To which ruling, Your Honor, I respectfully reserve a bill of exception, making a part of it the court's ruling as well as the argument of counsel.

BILL NUMBER SIX

MR. MILLER:

In this case if a man says he has a personal grudge against the Defendant that it would only be proper that his entire testimony be stricken from the record.

THE COURT:

The Court could not disagree with you more. Certainly in view of the officer's testimony he's very frank to admit he has a personal grudge, but he says it would not color his testimony and it is up to the Court to determine that.

* * * * *

APPENDIX B

SUPREME COURT OF LOUISIANA
New Orleans, 70112

STATE OF LOUISIANA September 20, 1974

V.

SALVADOR S. CIRAVOLA No. 55,125

- - - - -

In re: Salvador S. Ciravola, applying for writ of Certiorari

- - - - -

Application not considered; not timely filed.

/s/ JAD
/s/ JWS
/s/ FWS
/s/ MEB
/s/ WFM

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
September 20, 1974

/s/ Phil Trice
Deputy Clerk

Office of the Clerk
SUPREME COURT OF LOUISIANA
New Orleans, 70112

October 11, 1974

Ralph R. Miller, Esq.
Attorney at Law
P. O. Box 190
Norco, Louisiana 70079

Re: No. 55,125
State of La. v. Salvador S. Ciravola

Dear Mr. Miller:

The Court today rendered the following decree on your petition for a rehearing on behalf of the defendant in the above entitled matter:

"Application for reconsideration denied. No official record supports contention of oral extension of time."

With kindest regards I am,

Yours very truly,

/s/ Harold A. Moise, Jr.
Clerk

HAMJr:db
cc: Hon. John M. Mamoulides

APPENDIX C

TITLE 14, ARTICLE 103 (3) OF THE LOUISIANA CRIMINAL CODE. LSA-R.S. 14:103 (3). REPRINTED IN PERTINENT PART AS FOLLOWS:

R.S. 14:103 OFFENSES-PUBLIC GENERALLY
TITLE 14

A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:

(1) Engaging in a fistic encounter; or

(2) Using of any unnecessarily loud, offensive, or insulting language; or

(3) Appearing in an intoxicated condition; or

(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or

(5) Holding of an unlawful assembly; or

(6) Interruption of any lawful assembly of people; or

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars or imprisoned for not more than ninety days, or both.

B. Any person or persons, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours or employment and working conditions, while in or on the premises of another, whether that of an individual person, a corporation a partnership, of an association, and on which property any store, restaurant, drug store, sandwich shop,

* * * * *

C E R T I F I C A T E

STATE OF LOUISIANA

PARISH OF ST. CHARLES

BEFORE ME, personally came and appeared RALPH R. MILLER, who being duly sworn deposed that he is the attorney for SALVADOR S. CIRAVOLA, applicant, that all allegations in the foregoing petition are true and correct, and that a copy of this petition has been duly served upon the State of Louisiana, through John M. Mamoulides, District Attorney for the Parish of Jefferson, Attorney for the Parish of Jefferson, Attorney for plaintiff-respondent, on January 7, 1975, by placing a copy of same addressed to him in the U. S. Mail.

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